

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4375 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

=====

1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

NARAN VISHRAM PATEL

Versus

STATE OF GUJARAT

Appearance:

MR YS MANKAD for Petitioners

MR MUKESH PATEL, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 03/03/2000

ORAL JUDGEMENT

In this petition, the petitioners are challenging the order dated 6.4.1985 passed by the Deputy Collector, Nakhatrana as confirmed by the Collector, Kachchh and the State Government in the Revenue Department in appeal vide order dated 16.4.1988 passed by the Additional Chief Secretary (Appeals).

2. The land in question admeasuring 2 Acres and 9 Gunthas in Survey No. 131/3 in village Bhadli in

Nakhatrana taluka of Kachchh district was held by Kumbhar Faku Ilias as an occupant under Section 6 of the Bombay Inams (Kutch Area) Abolition Act. The occupant sold the land in question to the present petitioners by a registered sale deed and the entry to that effect was made in village Form No. 6 on 10.2.1976 as per the entry made by the Deputy Mamlatdar, Nakhatrana. In the year 1985, however, the Deputy Collector issued a notice and by impugned order dated 6.4.1985 declared the transaction to be illegal on the ground that the land held by the occupant was of new tenure and ordered that the land be confiscated to the State. The petitioners' appeal came to be dismissed by the Collector, Kachchh who also rejected the petitioners' contention that the transaction could be regularised ex-post facto. The petitioners' revision met with the same fate at the hands of the Additinal Chief Secretary (Appeals), Revenue Department who rejected the revision application by the impugned order dated 16.4.1988 at Annexure "C" to the petition. Hence, the present petition.

3. At the hearing of the petition, Mr YS Mankad, learned counsel for the petitioners has submitted that initiation of proceedings beyond reasonable time was sufficient to vitiate the notice and the authorities could not have declared the transaction to be illegal after lapse of a long time as the entry was certified by the Deputy Mamlatdar as far back as in 1976.

4. On the other hand, Mr Mukesh Patel, learned AGP has submitted that since the transaction was resorted to without obtaining prior permission of the authorities, the transfer was impermissible and nothing can be done in this petition.

5. Having heard the learned counsel for the parties and having regard to the decision of this Court reported in *Jesus & Mary Gujarat Society vs. Lakhabhai Arjanbhai* (since decd.) by his heirs & LRs, 1998 (2) GLR 1626, it is clear that all statutory powers are required to be exercised within a reasonable time and that in such cases a period of nine years will have to be considered as unreasonable. Of course, if the transferor or the transferee had suppressed material facts or had played fraud on the authorities, the powers could be exercised even after lapse of a long time as and when such fraud or suppression is detected. However, it is not the case of the respondent authorities that the transferor or the present petitioners had suppressed any facts from the authorities or that they had played any fraud on the authorities. Hence, the general rule will apply that the

power should be exercised within a reasonable time and that such powers could not be exercised after an unreasonable period of 9 years. On this ground, the petition deserves to be allowed.

6. In view of the above discussion, the impugned orders at Annexures "A", "B" and "C" are quashed and set aside. While quashing and setting aside the impugned orders, it is clarified that if the petitioners and their predecessors were required to pay any amount for regularization of the transaction (had the petitioners' predecessors approached the authorities for previous permission and such permission was required to be granted), there is no reason why the State Exchequer should lose such amount. Hence, it will be open to the respondent authorities to work out in accordance with law such amount which was payable for the transaction in question, which was certified on 10.2.1976 by the Deputy Mamlatdar, as stated above. It is obvious that the amount was not recovered or worked out from 1985 till today only because of the proceedings initiated for declaring the transaction as illegal, but now that this Court sets aside the impugned orders at Annexures "A", "B" & "C" only on the ground that there was unreasonable delay in initiation of proceedings, the respondent authorities will be at liberty to recover the amount from the petitioners with simple interest at 12% per annum. As and when such amount is determined, the petitioners shall pay the same with interest as aforesaid within two months from the date of receipt of the demand notice from the authorities.

7. Subject to the aforesaid direction, Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

March 3, 2000 (M.S. Shah, J.)

sundar/-